

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: January 16, 2009)

DEBBIE L. HADDEN, parent(s) of LESSIA)	
LYNN HADDEN, a minor,)	No. 02-1262V
)	
Petitioners,)	
)	Autism; Statute of Limitations;
v.)	Untimely Filing; Motion for
)	Dismissal Decision
SECRETARY OF THE DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES,)	
Respondent.)	

DECISION¹

A digitally-recorded status conference was held in this case on Thursday, January 15, 2009, with petitioner and respondent's counsel. During the status conference, petitioner, who has filed this vaccine claim on behalf of her minor daughter, confirmed that she is unrepresented by counsel and that her daughter will turn eighteen years old in September of this year. Petitioner also stated that she has known of her daughter's autism diagnosis since her daughter turned five or six years old.

On September 25, 2002, petitioner, Debbie Hadden, filed this petition seeking compensation under the National Vaccine Injury Compensation Program (the "Vaccine

¹ Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

Program” or the “Act”).² At the time of the filing of the vaccine petition, petitioner’s daughter was ten years old. Based on petitioner’s own representations during the status conference, it is clear that more than thirty-six months had passed between petitioner first learning of her daughter’s autistic condition and the subsequent filing of her vaccine claim. The vaccine statute provides that no petition maybe filed for compensation under the Program for such injury after the expiration of thirty-six months after the date of the occurrence of the first symptom from manifestation of onset or of the significant aggravation of such injury. 42 U.S.C. sec 300aa-16(a).

In this case, petitioner acknowledges that her daughter’s autistic condition preceded the filing of this action by more than thirty-six months. Petitioner did not file her vaccine claim any earlier because, as she explained during the status conference, she did not know for a period of time that autism cases could be filed under the Vaccine Program. Petitioner also explained during the status conference that she has recently lost both her job and her home and that she does not have the resources to obtain her daughter’s medical records in connection with this claim. Understanding that her claim is time-barred as a matter of law, petitioner elected to forego the expense of obtaining medical records and consented to the issuance of a decision dismissing her claim for lack of timely filing.

Consistent with the discussion during the status conference, the undersigned finds that petitioner’s claim must be dismissed as petitioner has not proven by a preponderance of the evidence that the petition was filed within “36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury” as required by the Vaccine Act. Petitioner’s claim is hereby **DISMISSED** because it was not filed timely. The Clerk shall enter judgment accordingly and **COURTESY EXPRESS MAIL** the decision to petitioner.

IT IS SO ORDERED.

Patricia E. Campbell-Smith
Special Master

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act).